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RELATIONS OF RAILROADS TO THE PUBLIC.

Report of the Committee on Railroad Transportation
of the New York Board of Trade and Transpor-
tation, upon Bills now pending in Congress to
Regulate Commerce by Railroad among the
several States.

ADOPTED UNANIMOUSLY AT THE ANNUAL MEETING, JANUARY 14, 1880.

To the Directors of the Board of Trade and Transportation:

Your Committee respectfully submit the following, relative to the Bill (H. R. 2,432), introduced in the House of Representatives, by Mr. Sapp, of Iowa, December 2d, 1879 :

The principal features of this Bill seem to be the appointment of a Board of Commissioners, with power to fix rates and supervise the operation of Inter-State Railways. It provides that there shall be nine Commissioners, appointed by the President, with the consent of the Senate, and that one shall be a resident of each of the judicial districts of the United States ; that they shall hold office for four years, and receive salaries of thirty-five hundred dollars each, besides their traveling expenses ; that they shall investigate the present rates charged by inter-State railroads, and fix maximum rates, which shall be kept publicly posted in every railway office and depot.

Various sections provide for the enforcement of these rates, and the Commissioners are also charged with the duty of keeping in the Department of the Interior, a Bureau of Railway Statistics, to collect information regarding the operation of railroads in this and other countries.

This Bill is doubtless a well meant attempt to remove the evils attending inter-State commerce by railroad, but your Committee do not think that, in its present shape, it is well calculated to do so. We do not think it practicable or advisable, with the knowledge at the disposal of the public at this time, to attempt to fix rates on inter-State traffic, although there can be no doubt of the power of Congress to do so. It is attempting too much with our present knowledge, and would probably result in failure. In this respect, the Reagan Bill, now pending in Congress, is much more wise, as it leaves the railroads free to fix any rates they please, only stipulating that they shall be public, and alike to all, and that no more shall be charged for a short than for a longer distance.

Another defect in Mr. Sapp's bill, is that it does not prohibit charging less

than the maximum rates to some shippers, and this is a very important point, because one of the chief evils of the present system is the discrimination between individuals, putting it within the discretion of a railroad company to build up the business of one citizen, and break down that of another. Your committee are also of the opinion that the number of commissioners named is too large, and that their salaries are too small. It would be better to concentrate the responsibility in the hands of three, or at most, not more than five commissioners, and these should be men of the highest character and capacity. Such men cannot be secured for thirty-five hundred dollars per year; railroad companies pay from ten to twenty thousand dollars per year for this class of talent, and the magnitude of the interests upon which such a board would have to administer is such that too high a compensation cannot be paid for the right kind of men.

The central idea upon which this bill is founded, namely: a national board of commissioners to supervise the workings of our vast internal commerce, investigate complaints of shippers, collect information, study the general workings of inter-State railways, and recommend legislation to Congress which will protect both the rights of the public and the railroads; also to co-operate with similar State commissions, we believe to be a necessity, and such a body, in our opinion, will have to be created, in the event of the passage of the Reagan bill, in order to superintend its operation and give effect to its provisions; but it has been thought wise by many persons who are interested in securing an equitable adjustment of the relations existing between railroads and the public, not to attempt too much at first, but simply to affirm and embody *just principles* in the law, and if the railways then refuse to voluntarily remedy the great evils which exist, to then apply for such supplemental legislation as may seem necessary to make these principles effective.

Unfortunately, the railroads have not thus far approached the question in such a spirit as could be wished. When regulation by separate States has been proposed, they have alleged that it is a question that can only be dealt with through national legislation; while one of their chief arguments when national legislation has been proposed, as in the Reagan bill, is a claim that a remedy can only be obtained through State legislation.

Your committee are of the opinion that both State and national legislation are necessary to meet all the conditions of the problem, and that an attempt should be made to secure both with the least possible delay. There can be no doubt that the Reagan Bill is the most conservative and best considered measure that has yet been proposed for the regulation of inter-State commerce, and yet it has been denounced by railroad officials and attorneys who have appeared in opposition to it as a summary of all that is absurd and unreasonable. They have prophesied that dire misfortunes would attend its workings in case of its becoming a law, while on the other hand, many persons who entertain radical views with regard to railroad management and the relations of railroads to the public, are of the opinion that it does not go far enough, and that its provisions should be more stringent and far-reaching.

In regard to these diverse opinions your committee are of the opinion, first, that some regulation of inter-State railroad traffic, by Congress, is absolutely necessary, and that the Reagan Bill may do very well for a beginning; that if its provisions should not be found to work well in practice, and should do in-

justice to the railroads, or that they are not sufficient to secure full protection to the public, they may be modified by subsequent legislation.

The principal features of this bill are as follows : Sections 1 and 2 provide that freight shall not be carried cheaper for one shipper than another under like circumstances. Section 3 prohibits combination or pooling of freights. Section 4, that more shall not be charged for transporting for a shorter than for a longer distance, and Section 5, that schedules of rates shall be publicly posted at each station. The other sections simply provide for carrying these provisions into effect,

As regards Sections 1 and 2, the fairness and desirability of their intent will commend them to both Railroads and all shippers who do not seek advantages over their fellows ; but in the opinion of your Committee they do not go far enough, for a shipper sending 9 car-loads of freights might be compelled to pay double the rate charged a shipper of 10 car-loads, because the services were not "like" although contemporaneous, and also the rights of small shippers are not adequately protected. Regarding the question of uniformity in rates, the testimony of Col. Fink, the fairest and one of the ablest, of railroad managers, is as follows :

"I do not think that a common carrier has the legal right to enter into special contracts with manufacturing establishments to carry freight at a less rate than for the public generally, for the purpose of encouraging the erection of such establishments on the line of its road.

It is not the province of railroad companies to make themselves partners in private enterprises. Even if they had the legal right, it is questionable whether it would be good policy for them to do so.

Nor do I think it right that common carriers should make special contracts on account of the quantity shipped, except when quantity forms an element in the cost of the transportation service, and this is only the case when the quantities are less than car-loads.

It does not cost less to carry ten car-loads of freight between two stations, A. and B., for one shipper, than it costs to carry one car-load for each of ten shippers. The railroad company derives as much benefit from ten small manufacturing establishments as from one large one of the capacity of ten small ones.

If the railroad company grant to the larger establishments lower rates of transportation, it would unjustly discriminate against parties with limited means, and be of no benefit to the railroad company. A common carrier should strictly adhere to the rule to charge the same rate for transportation of the same article between the same points, only discriminating on account of quantity as far as it influences the cost of transportation. He should not make any arbitrary distinctions merely depending upon his will."—(*From Report by Mr. Nimmo on Internal Commerce, 1877.*)

Why, however, the provisions of a regulating act should be limited in their application to quantities of one car load your Committee cannot see. By far the larger number of shippers do not ship as much as one car-load at a time, and while a smaller quantity than a car-load may not be quite as cheaply transported as that unit, yet we do not understand that this bill proposes to interfere with the *rates* which may be charged, and in that case the principle of equality might as well be applied to shippers of a hundred pounds as a car load, and in any event no more should be charged for transporting in small quantities than the actual additional cost.

It is now everywhere admitted that railroads are highways, and the cardinal principle of the highway is that all citizens are entitled to equal rights

thereon. Those persons who argue that it costs more to transport small quantities than it does large ones, and that the principle of wholesale and retail everywhere obtains, start with false premises ; they forget that a railway performs a public function ; that it begins by asking and obtaining certain privileges because the enterprise is "*for public use* ;" that the vote of the small shipper has as much to do with conferring the franchises under which railroads are operated, as did that of the large shipper, and that therefore *the right of the citizen on the highway* comes in to limit the application of the principle of wholesale and retail which obtains in private transactions. It is the same principle, carried a little further, which Col. Fink enunciates in his testimony above quoted, and the pooled lines which are under his charge recognise this for their rates are the same to shippers of a hundred pounds as they are to those who ship in car-load lots. In point of fact, the difference in the cost of doing the business of the many small shippers who may be termed the general public, and that of the few large shippers is too small to be appreciable ; a full car-load can, generally, be made up from the goods destined for two or more individuals, and when made up, costs no more to haul than if belonging to one person ; it may be a little more trouble to bill and collect the freight, but the force maintained by the railroad is sufficient for this service, and this really costs no more.

In west-bound traffic, a large portion of the Rolling Stock goes empty, and with east-bound the quantities are usually in car-load lots and upward, so in any event no material hardship to the railroads can accrue, and it may well be esteemed one of the accessories to a public service of this kind, that all shippers large and small should be treated alike. Limiting the application of just principles in transportation to car-load lots, is in our opinion unjust to the large class of small shippers, tending to prevent their becoming large ones, and discriminating against a worthy class of citizens, who possess the same constitutional rights as their more fortunate competitors.

In short, it may be termed class legislation, and opposed to the fundamental principles upon which our government is based.

We, therefore, recommend striking out of this bill the parts limiting its application to quantities of one car-load and upwards.

Section 3 prohibits pooling or combinations, and it may safely be said that this is one of the most important sections of the bill. It touches the most vital principle underlying the relations of railroads to the public, viz. : whether these modern highways shall be allowed to charge the public rates for transportation which will afford more than a fair return, say 10 per cent. upon the actual capital originally paid, in providing these facilities. The railroad law of the State of New York, and many other States, was evidently formed on the theory of a certain partnership or community of interest in these modern highways, the State contributing the franchise while associations of individuals in a corporate capacity constructed and operated the roads, for which they were allowed to charge certain tolls or rates for transportation. It was expressly stipulated, however, that when these charges amounted to a sum exceeding 10 per cent. upon the actual cost of the roads, deducting operating expenses, that the Legislature might then reduce the tolls or charges, so that they would not yield more than this rate ; thus virtually saying that the public must share in the benefits of this great invention, as they do in other inventions after the person

who invents or develops the idea has received (through a patent for a given space of time) a proper reward for his outlay of time or money. The spirit of this law has been grossly evaded by establishing a fictitious basis of cost, in many cases by "Credit Mobilier" construction companies, in others by extension of roads and betterments paid out of "surplus earnings," or in other words, amounts contributed by the public through excessive rates for transportation, in others by barefaced "stock watering," through which a nominal cost several times as much as the actual, was established; all of which have been used to evade the manifest intention of the law and to benefit a special interest at the expense of all other interests. A prominent illustration of this almost universal practice may be found in the Union Pacific Railroad, the Congressional investigation of the Credit Mobilier Construction Company showing that the directors of the Union Pacific Road presented themselves, as directors of the Credit Mobilier Construction Company, with \$94,650,287.24 in cash, stock and bonds, of which they acknowledged \$43,929,328.24 were profits. It is believed by many that the \$27,236,000 received as the proceeds of bonds issued to them by the Government would, if honestly expended, have been sufficient to construct the entire work; and yet the commerce of this country is being taxed to pay dividends upon the entire mass of obligations thus issued.

Another example is that of the New York Central and Hudson River Railroad, which in 1867 and 1868 watered its stock to the extent of about 47 millions of dollars, the *dividends* upon which, with interest, have since amounted to over 50 millions of dollars.

The Comptroller of the State of New York, in his last annual report (page 40), alludes to this practice as follows: in discussing the relative advantages of the rail and the water lines he says, "*The railroad destroyed its natural advantage when it watered its capital.*" In the report of the legislative committee investigating the coal combination of 1878, we find the following:

"During the receipt of these enormous profits many of the coal corporations, as was the case with railroads not engaged in the coal carrying trade, unable under their charters, or for other reasons, to declare dividends upon their stock that would absorb their unexpended surplus, issued additional stock to the stockholders, for which they paid nothing, inaugurated what is commonly known as stock-watering, or a capitalization of surplus earnings, which is in substance exacting money from the people, creating an indebtedness representing the same, and making this the basis for forever asking the public to pay interest upon their own money so exacted."

Combinations and pools are the only methods by which returns can be paid upon the enormously inflated railway system of this country, and if it be decided that it is wrong for the production and commerce of the nation to support this burden which has been placed upon it, then combinations and pools should be prohibited, in which case natural competition would probably result in the public sharing in some degree in the wonderful improvements which have taken place in the transportation business. It is urged in favor of pools, that the uniformity and steadiness of rates resulting therefrom are of more importance to the public than cheap rates; and these are no doubt redeeming features. But with a law compelling uniformity and prohibiting sudden changes, these advantages might be secured, with reasonable rates in addition. This would certainly be more to the public interest than the plan of Mr. Charles Francis Adams, Jr., which is, in brief, that railroad companies should be au-

thorized to legally enforce their working agreements with each other ; which is another way of legalizing pools and combinations—entirely abrogating the principle of competition, and forcing the public to pay rates which will sustain our railway system upon its present inflated basis, or indeed *any higher basis which railroad managers may see fit to establish.* In the opinion of your committee, not only should pools and combinations be prohibited, but legislative action, both National and in all the States, cannot too soon be taken to prevent the further extension of stock watering in Railroad, Telegraph and other enterprises, which are public in their natnre, and which the public are obliged to use.

Regarding Section 4, the wisdom of prohibiting the charging of more for a shorter than for a longer distance is disputed by railroad men, who allege that, in some cases, it would prevent the marketing of surplus products which must necessarily be carried at a very low rate. The railroad view of the question is illustrated by the case of the Marietta & Cincinnati Road which, in order to compete with the river route frequently carries from Parkersburg and Marietta to Cincinnati for half the sum it charges to intermediate stations. It seems probable, however, that such instances are rare compared with those where great discrimination exists without such reasons, and if a law was enacted embodying this feature, and it failed to work equitably, it could subsequently be modified.

The publication of posting of rates and fares, as provided in Section 5, is very desirable, and can be only objected to by those who seek to evade the provisions of the law concerning equality, and in order that the spirit of this Act may not be evaded, a provision should be inserted that upon all through business between interior points in this country and foreign countries, the railroads should not receive as their share of the through rate a less sum than their schedule rate, from or to the seaboard city through which the merchandise is exported or imported. In the past, railroad tariffs have been frequently evaded, under the cover of a through rate on export or import business; and this loophole for the evasion of the provisions of the bill should be closed.

The following are two, among the many illustrations which might be furnished to show the necessity of such a law; the first is a memorial to Congress, which has been extensively signed by houses in the Pacific trade, and recites as follows :

“MEMORIAL.”

“ To the Honorable, the Senate and House of Representatives of the United States of America, in Congress assembled.”

“The memorial of the undersigned, Merchants and Shipowners, residing and doing business in the United States, respectfully represents :

That the bill to regulate inter-State commerce and to prohibit unjust discrimination by common carriers, which has passed the House of Representatives and is now before your Honorable body, would, if it should become a law, have results beneficial in the highest degree to the shipping, commercial and other interests of the country.

That it has heretofore been the custom of Merchants shipping goods from the East to California and Oregon, to send the finest goods by rail at high rates of freight, and the medium goods by clipper ships via Cape Horn, at lower rates of freight.

That the Pacific Railroad Companies have now entered into a combination with the Pacific Mail Steamship Company and with the railroad connecting

with the Pacific Railroad, to divert the carrying of freight entirely from the clipper ships, and have also entered into contracts with many merchants, where-by all such merchants are bound and compelled to ship all their goods to the States of California and Oregon by those roads ; and unless they do so, or in case they send a portion only of their goods by the said railroads, a higher rate of freight from them than from those shippers who send all their goods by the said railroads is exacted, thus rendering it impossible for those shippers from whom the higher rates of freight have been exacted, to compete in the market in the said States with those merchants and shippers who have paid a much lower rate of freight : that is to say, the merchant who pays 12 cents per pound freight, would have no chance successfully to dispose of his goods as against the merchants who only pay half that rate.

That furthermore, to compel the aforesaid Merchants and Shippers to keep good faith and to send all their goods by the lines of the said Railroads, the aforesaid Shippers are compelled to agree, when shipping their goods with the said Railroad Companies or their agents, that a sum equal to the freight, calculated at the highest rate exacted, shall be retained by the said Railroad until the end of each month, and at the end of the month to be in part returned as rebate in the case of those Shippers who have sent all their goods by rail, and the same to be forfeited to the said Railroads in the case of those Shippers who have not sent all their goods by rail.

And your memorialists most respectfully represent that the results of the said Act, in thus destroying a most iniquitous and unjust monopoly exercised by the Railroads will be of great advantage and benefit to Merchants, Shipowners, Shippers and others.

Wherefore, your memorialists most respectfully pray that the aforesaid bill may be speedily passed by your Honorable body."

" And your memorialists will ever pray."

The second is a newspaper article, from the "*New York Tribune*," of December 13th, 1878

"INSTANCES OF REDUCED RATES."

"MERCHANTS WHO ARE FAVORED BY RAILROADS, AND MERCHANTS WHO ARE NOT."

"The reports about the cutting of freight rates by the railroads were further confirmed Wednesday by the statements of a number of merchants on the Produce Exchange. The railroad pool, it was said, was one of the greatest evils of the country ; there ought to be some national law which would make the managers of the roads abide by their charters. Said one merchant : 'The railroads are common carriers, the meaning of which is that they shall offer equal facilities to all. There is no reason why they should not take a thousand car-loads for one man at the same rate that they would carry the same amount for another, from the same point ; if it were made a test case in the courts, a violation of the rule, I believe, would result in a revocation of their charter.'

It was stated that the railroads in many cases presented bills to merchants who were allowed to cut rates, but later there would be an additional rebate of from 10 to 15 per cent. in favor of one. Two merchants, it was said, by way of example, had made a contract for freight from Chicago to New York at 25c., the schedule rate being 35c. ; when the bills were presented one merchant was allowed a rebate of $2\frac{1}{2}$ c. a hundred. A specific instance was found, it was alleged, in the case of Armour, Plankinton & Co., and Herman Brock, both provision dealers. Mr. Brock ordered 250 tierces lard from Chicago. On the same day in which this amount was shipped to him an equal amount was sent, he alleges, to Armour, Plankinton & Co. On Tuesday their bills were drawn up by the Erie Railway, but, by an error of the messenger, the bills were exchanged. Mr. Brock found that he had been given a cut rate, making reduction of \$24. Yesterday Mr. Armour sent to Mr. Brock and wanted the matter corrected, when the latter replied that if the road had made a mistake that was not his fault. Mr. Brock stated that the private rates allowed to some

firms to the exclusion of others were ruining the trade. No firms could compete with others having the benefit of such privileges. He insisted that uniform rates should be established and maintained, and then merchants could carry on their business on equal chances. He had just received an order from Europe for 700 tierces of lard, 200 boxes of bacon, and 200 tierces of tallow, but he was not able to give prices as favorable as other firms, without losing money. A grain merchant (one of the favored ones) on the Produce Exchange stated to another member yesterday that he feared the recent publications about cutting rates would be damaging to mercantile interests; that if he had not had such privileges he could not have had his present business. The cutting of rates below the schedule he said, was nothing new; it had been done always more or less; the agreement made by the railroads had never been carried out."

An illustration of the effect of such discrimination is found in the fact that since the publication of the above Mr. Brock has failed, and his is by no means an isolated case, as is illustrated by the following extract from the New York *Daily Bulletin*, of July 30, 1879:

"A letter from a respectable city commission merchant has come under our notice which shows how the system of special rates is transferring the merchanting business into the hands of a favored few at the expense of the many. We are permitted to quote from the letter as follows: "Owing to the close competition in the foreign shipping and commission business, together with the tendency of our railroads and ocean transit to discriminate rates in favor of large monopolists, I find it now impossible to do the legitimate trade that in former years I did; and have concluded that, rather than continue business on my own account, competing against such combinations, to try and find a position in some large firm whose business would be accessible to the advantages given by railroads and through freight discriminations. I would, therefore, take the liberty of asking you if you have room for me in your business? From my long experience in the export trade I feel assured that I might be of some service to you; and with my connections throughout the principal ports and cities of Europe, feel that the same might be utilized by your house."

In conclusion your committee submit the following resolutions:

Resolved, That in the opinion of this Board, the provisions of the Reagan bill for the regulation of inter-State commerce, as a whole are just and reasonable; and with the amendments relating to small shippers before alluded to, and the prohibition of "cutting" on export and import business, should become a law; that some measure of the kind is absolutely necessary to protect the public interest, and further, that the magnitude of the interests involved are so great that a competent Board of Commissioners should be provided by a supplemental act to superintend the operations of inter-state railroad laws and from time to time recommend to Congress such additional or qualifying measures as may be required to do substantial justice to the public and railroad interests.

Resolved, That the compensation for such commissioners should be large enough to command the services of men of the highest character and ability.

All of which is respectfully submitted.

F. B. THURBER,
MOSES G. HANAUER,
FRANCIS BAKER,
SAMUEL RAYNOR,
CHARLES WATROUS,

} Committee.





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